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Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

EX PARTE

Re: **Radio Market Definition**
MB Docket No. 02-277;
MM Docket Nos. 01-317 & 00-244

Dear Ms. Dortch:

Viacom has reviewed the proposal to change the radio market definition submitted on May 9 by Victor Miller of Bear Stearns. Viacom continues to believe that there is no longer any justification for the local radio ownership rules and that they should be repealed in their entirety.

Nevertheless, if the Commission is determined to retain some restrictions on local radio ownership, then Viacom believes that the rule must take into account the competitive environment in which radio operates, particularly in larger markets. Viacom wholly agrees with Mr. Miller that any change to the radio local ownership rules should not place the radio industry at a competitive disadvantage to newspapers and television. Any changes to the radio ownership rules should provide more flexibility for ownership, not less.

Create a Higher Tier or Eliminate Caps in the Largest Markets.

Although Mr. Miller's proposal is different from the modified Arbitron Metro-based methodology suggested by Viacom in its May 1, 2003 submission, Mr. Miller's proposal is commendable because it recognizes that the numerical caps should be lifted in larger radio markets. Viacom agrees that there is no justification for treating large markets, which may have 60, 70, 95 or more stations, like medium-sized markets with 40 or 45 stations. Viacom advocates the creation of new tiers for larger markets. In markets with at least 60 stations, an entity should be permitted to own 10 stations. If such a tier were adopted, an entity in even the smallest markets in that tier (with 60 stations) would be able to own only 17% (or 10) of the radio stations in that market.

Compare this 17% with the allowable percentages of ownership under the current radio ownership tiers: In markets with 15 or fewer stations, an entity can own as much as 50% of the stations in that market; in markets with 15-29 stations, an entity can own as much as 40% (or 6 stations) of the stations in that market; in markets with 30-44 stations, an entity can own up to 23% (or 7 stations) of the stations in that market; and in stations with at least 45 stations, an entity can own up to 17% (or 8 stations) of the stations in that market. Logic and equities dictate that in the nation's larger markets, an entity should be permitted to own at least the same percentage of stations as that permitted in the smallest of markets. Accordingly, Viacom urges the Commission to address the inequities of radio ownership in larger markets and to add at least one ownership tier with a threshold of 60 stations. The Commission should lift or eliminate the cap in even larger markets.

Adjust the Existing Tiers Downward.

Mr. Miller's proposal also properly recognizes that if the Commission makes changes to the method of counting the number of stations in a market, by adopting a new market definition, then it would be inconsistent to leave static the numerical ownership tiers. Because the Metro-market approach proposed by Mr. Miller results in significantly fewer radio stations in each market than the contour-based approach, the existing ownership tiers should be adjusted downward. For example, ownership of 8 stations should be permissible in Arbitron Metros with 40 – rather than 45 – radio stations. Ownership of 7 stations should be permissible in Arbitron Metros with between 25 and 39 (inclusive) radio stations.

Eliminate the Single-Service (AM/FM) Caps.

Under Mr. Miller's proposal, the local radio ownership rule would continue to contain separate sub-caps for AM and FM radio stations, in addition to the overall local radio ownership cap. For example, under the current rule, in a market with 45 or more stations, a single owner is permitted to own 8 radio stations overall, but no more than 5 in a single service (AM or FM). Viacom believes that there is no justification for a single-service limit.

The Commission offered only a weak rationale when it originally adopted the single-service caps in 1992. It appeared to be concerned that FM stations enjoy competitive advantages over AM stations. *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755, para. 44 (1992). But whether a radio station is in the AM or FM service, it is no less a source of diversity, competition and localism. For purposes of the local television ownership rule (as opposed to the national cap), the Commission properly does not distinguish between VHF and UHF television stations, even though historically VHF stations have been viewed as more desirable.

If the Commission is truly concerned that AM stations are competitively weaker than FM stations, then no cap should apply to AM station ownership within a market in order to encourage investment in that service. There are no ownership caps for Class A and low power television stations, which may similarly be viewed as competitively disadvantaged. In reality, however, the assumption that AM stations are weaker is an unsupported assumption, because AM stations gross the highest revenues in some large markets. Duncan's Radio Market Guide (2001 Edition) estimates that four of the ten highest billing radio stations in the country are AM stations. The AM/FM single-service caps are thus completely arbitrary and should be repealed.

Do No Harm – Permit All Groups in an Arbitron Metro to Own the Same Number of Stations.

Although Viacom is a large radio company, it has in fact been judicious in its acquisitions and owns the maximum number of stations permitted in very few markets. Nevertheless, Viacom supports the "grandfathering" of existing combinations.

Viacom is concerned, however, that grandfathering could have an anticompetitive effect unless other competitors in the market are allowed to achieve parity with the grandfathered cluster. Specifically, in markets where one or two owners already have reached the numerical limits on station ownership (e.g., 8 or more stations/5 or more FMs), grandfathered incumbent station groups would enjoy a significant competitive advantage if other participants in the market are restricted from amassing a station group of equal size. For example, under Mr. Miller's Metro-market approach in Orlando, Viacom would be limited to owning no more than 4 FM stations – it currently owns three – even though under the current contour-based rule it is permitted to own 5 FMs. Indeed, both Clear Channel and Cox already own 5 FM stations in the market. As a result, under a grandfathering system that freezes in the status quo, Clear Channel and Cox would be frozen in at a competitive advantage to others in the market. Viacom would suffer a similar competitive disadvantage in at least four other markets. Neither Viacom nor any other potential competitor should be hamstrung in its ability to compete aggressively for listeners and ad revenue. As the Commission seeks to redefine the radio market definition, it should avoid the anomalous tangential result of locking into a competitive position one station group over another. Such a result clearly would be contrary to the public interest and the competition-based goals of the biennial review

Viacom therefore agrees with Mr. Miller that, in any radio market in which an existing station cluster has been grandfathered, the Commission should permit ownership of the same number of stations owned by the largest grandfathered group in the market. This approach appropriately balances the reliance interests of existing incumbent groups with the need to permit would-be competitors in the market to achieve the scale and market presence to compete effectively.

Respectfully submitted,

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MSS:rlp